

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEMAR RHOME,

Petitioner,

v.

RON HAYNES,

Respondent.

Case No. C16-234 RSL-BAT

**REPORT AND
RECOMMENDATION**

Petitioner Demar Rhome filed this action under 28 U.S.C. § 2254 challenging his 2006 conviction in King County Superior Court of first degree murder. Dkt. 1-1. The Court's records reflect that the petition is a second or successive petition which must be transferred to the Ninth Circuit.

DISCUSSION

Petitioner previously filed a federal petition for habeas corpus relating to his 2006 first degree murder conviction. His federal petition was denied on the merits and dismissed by the District Court on October 5, 2012. *See Rhome v. Fraker*, USDC No. C09-85 RSL (Dkt. 68 therein). The District Court granted a certificate of appealability on all of petitioner's claims. *Id.* On March 5, 2014, the Ninth Circuit Court of Appeals affirmed the dismissal and on March 3, 2014 issued its mandate. *Id.*, Dkts. 72, 73.

Petitioner's current petition appears to be a second or successive petition. If a petition is second or successive, then petitioner must seek authorization from the Court of Appeals before filing the new petition with the district court. 28 U.S.C. § 2244 (b) (3) (A). Ninth Circuit Rule 22-3 (a) provides guidance:

Any petitioner seeking leave to file a second or successive 2254 petition or 2255 motion in district court must seek leave under 28 U.S.C. §§ 2244 or 2255. An original and five copies of the application must be filed with the Clerk of the Court of Appeals. No filing fee is required. If a second or successive petition or motion, or application for leave to file such a petition or motion, is mistakenly submitted to the district court, the district court shall refer it to the court of appeals.

CONCLUSION

The Court recommends that this petition, which the Court construes as a request for permission to file a successive petition, be referred to the Ninth Circuit and that the file be administratively closed without deciding whether the petition should be dismissed.

Any objections to this Recommendation must be filed and served upon all parties no later than **Tuesday, March 15, 2016**. The Clerk should note the matter for **Thursday, March 17, 2016**, as ready for the District Judge's consideration if no objection is filed. If objections are filed, any response is due within 14 days after being served with the objections. A party filing an objection must note the matter for the Court's consideration 14 days from the date the objection is filed and served. The matter will then be ready for the Court's consideration on the date the response is due. Objections and responses shall not exceed twelve (12) pages. The failure to timely object may affect the right to appeal.

DATED this 23rd day of February, 2016.



BRIAN A. TSUCHIDA
United States Magistrate Judge